Journal of the American JUDICATURE Society

June, 1954

VOLUME 38, NUMBER 1

If we are to keep our democracy, there must be one commandment — Thou shalt not ration justice.

—LEARNED HAND

AMERICAN JUDICATURE SOCIETY • ANN ARBOR, MICHIGAN

The American Judicature Society

TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

Founded in 1913 by Herbert Lincoln Harley
Hutchins Hall – Ann Arbor, Michigan

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DIRECTORS

Journal of The American JUDICATURE *Society*

Vol. 38, No. 1

June, 1954

GLENN R. WINTERS, Editor

CONTENTS

Racial Discrimination in Selection of Jurors

AMIDST the widespread discussion and controversy over the school segregation cases recently decided by the Supreme Court of the United States, another recent decision of that court in the field of discrimination has scarcely had the attention it deserves.

We refer to Chief Justice Warren's opinion of May 3 reversing the judgment of a Texas court which had sustained the conviction of one Pete Hernandez for the murder of a cotton planter in 1951. The appeal was based on the fact that "for the past twenty-five years there is no record of any person with a Mexican or Latin-American name having served on a jury commission, grand jury or petit jury in Jackson County." Hernandez asserted that there were many persons of Mexican ancestry in the county who were qualified for jury service, but that they had been "intentionally, arbitrarily and systematically" excluded. This, he claimed, was a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States constitution.

The Texas Court of Criminal Appeals rejected this contention on the ground that "the equal protection clause of the Fourteenth Amendment contemplated and recognized only two classes as coming within the guarantee, the white race comprising one class, and the Negro race comprising the other." But Chief Justice Warren denied that the Fourteenth Amendment was based

on a "two-class theory." "The exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment," he declared.

"The Texas system of selecting grand and petit jurors by the use of jury commissions is fair on its face, and capable of being utilized without discrimination," the Chief Justice noted, but while the law itself does not discriminate, "those administering the law do." "Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury during some particular period," he observed, "but it taxes our credulity to say that resulted in there being no members of this class among the over 6,000 jurors called in the past twenty-five years."

Hernandez did not ask for proportional representation of Mexican-Americans on the jury, nor indeed to have any of them necessarily there at all. He only asked that his case be considered by a jury from which all members of his group had not been systematically excluded. "To this much," said Chief Justice Warren, "he is entitled by the Constitution."

Some people have gone so far as to suggest that this decision makes it necessary for a judge to study the cases on his docket to determine what nationalities or other minority groups are involved and make arrangements with the jury commission to make certain that members of those groups are represented on the grand jury and trial jury panels. This is ridiculous. Texas has sixteen counties without a single Latin-American resident, and forty-four with fewer than fifty of them. Such an interpretation of the decision would make it impossible, or nearly so, to try a Latin-American in those counties. And what of the Catholics, Jews, Poles, Puerto Ricans, and others who live happily throughout our land, sometimes as a minority and sometimes as a majority? They are all capable of being fair to themselves and to each other if given the chance. All that is needed to give them that chance, and to comply with the Supreme Court decision, is a policy established by the trial court at the time the jury commission is empaneled that no person is to be excluded from jury service because of membership in any national, racial or religious group.

Soviet propagandists have made much of such examples of racial tension as could be found in this country. We challenge them to acknowledge the assurance of justice for members of minority groups which this decision gives, and to make similar provision for the millions of such people under their rule.

Annual Meeting Announcement

The 1954 annual meeting luncheon of the American Judicature Society will be held in the North Ballroom of the Conrad Hilton Hotel, Thursday noon, August 19. There will be a program, details of which will be announced in the August Journal, followed by a brief business meeting for election of directors and such other business as may come before the meeting. After adjournment of the members' meeting, the directors will meet for election of officers. All members and friends of the Society will be welcome. Tickets for the luncheon will be on sale at the American Bar Association luncheon and dinner ticket counter in the Conrad Hilton Hotel.

Guest Editorial

"PRACTICING" LAW

Why do we say that we are "practicing" law? Because it is literally true. We never quite master any branch of the law, but we continue practicing and learning more about it. It follows as surely as night follows the day that the more hours a lawyer works, the more he learns about how to be a good lawyer.

Given two men with equal education and native ability, one of whom works twice as many hours as the other, it will take the loafer ten years to attain the proficiency the other attains in five years.

The natural tendency of some young lawyers who read this will be to say:

"This writer, now past sixty, is living in the past. Why doesn't he get up to date? Things have changed in the last thirty-five years."

So they have. Mightily. A lawyer friend, declining a committee appointment because he was too busy, told me most of the young lawyers he has anything to do with won't work.

"Come five o'clock, they practically run over us older lawyers to get out. They show up about nine, go out at ten for coffee and rolls, lunch at twelve, back at two, away at five or before. No nights, Saturdays or Sunday work."

Many, or most, people now make more money working less hours than ever before. But who are these people? For the most part, they are hourly-paid workers, wage-earners.

In general, the hourly-paid worker has routine work which he can soon master. A skilled mechanic operating a precision machine may learn all there is to know about it in a day or a week. He is no better on that particular machine five years later.

But lawyers are not wage-earners, laborers, union men, hourly-paid workers. We are in a profession where each hour spent working at it increases our education and proficiency. That is why we say we are "practicing" law.

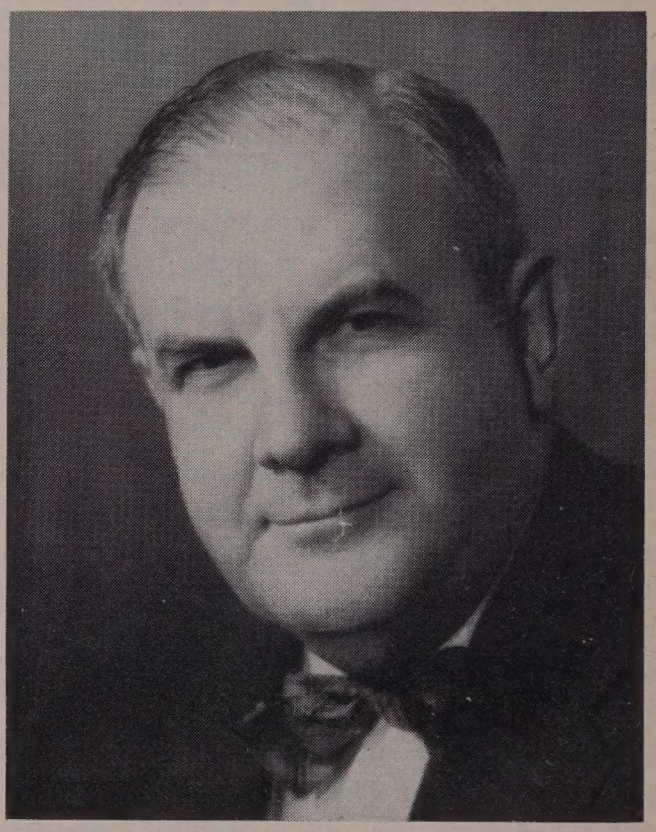
Young lawyers: Thirty years from now, you will be the leaders of the bar, on our courts, in high public office. Isn't it worthwhile now, when you are physically strong and mentally alert, to prepare yourselves so that our profession will not only hold its own but reach new high levels of public service?

— Timothy I. McKnight, president, Illinois State Bar Association. From the Illinois Bar Journal.

A Nobler Challenge

By

STANLEY N. BARNES



STANLEY N. BARNES is Assistant Attorney-General in charge of the Anti-Trust Division of the United States Department of Justice. From 1946 until nearly a year ago he was a judge of the Superior Court of California, Los Angeles County, of which he was presiding judge in 1952 and 1953. He was a member of the President's Conference on Administrative Procedure last year and is now co-chairman of the Attorney-General's National Committee to Study the Anti-Trust Laws.

MY DEPARTURE from judicial ranks and the assuming of new duties in Washington have presented me with an opportunity for greater contact with our profession and a wider horizon to view the problems of the legal profession. My contacts and experiences in the past year have caused me to come to the following conclusions:

First: That there exists among the bench and bar a widespread dissatisfaction with existing legal processes;

Second: That this feeling of the bench and bar is but the delayed reaction to the same conclusion reached earlier by Mr. John Doe, average layman;

Third: That there has been too much reliance by both the bench and bar on certain allegedly all-inclusive and conclusive panaceas; and

Fourth: That such cure-alls offer no easy way out but have only succeeded in dulling our professional responsibility toward finding the real solution.

Aware of this problem, the legal profession has sought to rectify these impressions. The comparatively recent national upsurge of public relations endeavors, approached upon a scientific, and, perhaps more important, a full-time basis, is significant. The State Bar of Michigan has produced a movie entitled

"Living Under Law," and the State Bar of Texas another entitled "With Benefit of Counsel." Both are efficient weapons aimed at improving public relations between the legal profession and the layman.

Congested Court Calendars

In Los Angeles the average interval from the date a jury case is at issue until it is tried is twelve months. The New York boroughs, and Cook County, Illinois, have been the recipients of national publicity in recent years, due to their congested calendars. We would expect them to be behind California courts. But Connecticut, Massachusetts, Minnesota, Missouri, Ohio, Pennsylvania, Texas and Wisconsin have substantial areas where litigants are waiting a longer time than in any California court. Even the lawyers and litigants of the circuit courts of Greenville and Pickens Counties, South Carolina, must wait half again as long as Los Angeles lawyers to get their cases to trial; and the 156,987 citizens of Hillsborough County, New Hampshire are 250 per cent worse off than the four and one-fifth million people in California's most populous county. As a matter of fact, Los Angeles County is just about at the nation-wide average of 11.5 months for jury cases and 5.7 months for non-jury cases.[1]

The federal courts are in a similar log jam, particularly in those districts where there has been a rapid increase of population. While overall figures indicate that in the eighty-six federal districts the median time from "at issue" to trial was seven months in 1952, the number of untried pending civil cases in those courts has more than doubled in the twelve years between 1941 and 1952 (29,394 to 60,362).[2]

Measures for Relief

For many years the easy, because obvious, solution to the problem of congested court calendars has been to "get more judges." But getting more judges is not enough.

> *"We can well question whether the objective of simple, inexpensive and expeditious adjudication is being achieved under today's administrative practice. In many instances, the cure is proving worse than the malady. In some administrative hearings, the records are infinitely longer than they would have been in court proceedings, and are filled with irrelevant and redundant material. The result of this has, in many instances, made adjudication under administratice practice far more expensive and much less expeditious than would have resulted from adjudication before the courts."*

New procedures are constantly being sought and tested, sometimes in the face of covert opposition or at least a negative approach to any change by certain members of the bar. Some lawyers have told me that they oppose pre-trial procedure. Probing into the matter convinces me that such a statement is usually made not because the subject has been studied, but because it has not.

One of the cure-alls suggested is the creation of more administrative agencies. Their increased role in the relations between government and citizens has been described by a former dean of Harvard Law School as "one of the most significant developments of recent decades." This solution has especial appeal to the layman, to the "businessman" who prides himself on his direct approach to all problems and his distrust of all courts. He is the client who asks you:

> "Why can't I get up there and say it in my own words; why do judges and lawyers keep butting in and prevent me from saying what I want to say the way I want to say it?"

1. Calendar Status Studies, Institute of Judicial Administration, June 30, 1953.

2. Annual Report of the Director of the Administrative Office of the United States Courts, 1952.

There has recently been suggested legislation which would provide for an administrative agency to take personal injury litigation out of the courts. Such a device would have a tremendous effect in reducing congestion in the courts of law, at least at certain primary levels, but I think before such a proposal or any similar proposal is seriously considered, we should take a look at the existing administrative agencies and how they are functioning.

Administrative law has of recent years received more attention, both from the law schools, the bar, and state and federal legislators, than formerly. One of the reasons for this has been its failure to measure up to the high results predicted for it.

Simple, Inexpensive, Expeditious?

As was said by one lawyer thoroughly familiar with his subject, the basic objective of administrative law has always been to provide a sound and equitable method by which important issues could be resolved under a system which permitted a greater degree of flexibility and resulted in simpler, less expensive, and more expeditious action than could be achieved through formal adjudication before the courts.

We can well question whether this objective of simple, inexpensive, and expeditious adjudication is being achieved under today's administrative practice. In many instances, the cure is proving worse than the malady. In some administrative hearings, the records are infinitely longer than they would have been in court proceedings, and are filled with irrelevant and redundant material. The result of this has, in many instances, made adjudication under administrative practice far more expensive and much less expeditious than would have resulted from adjudication before the courts.[3]

May I give you a few examples of what has occurred in some agencies, and the opinion of the agency counsel given to me as to the remedy, if any.

I. The Federal Food and Drug Administration

In the strangely-named case of *Atlas Powder Co.* v. *United States*[4] commonly known as the bread case, litigation started in 1941, was delayed by the war, and reactivated in 1946. The hearing lasted ten months; and included *17,130 pages of testimony and 497 exhibits.* The principal issue in the hearing was the action of emulsifying agents in bread.

The great length of the record developed upon a question as to whether the emulsifying agents products by Atlas were harmful to human beings. The great bulk of the testimony was of a scientific nature involving numerous tests and experiments with the emulsifying agents.

Government counsel is of the opinion that two factors were responsible for the protracted length of the record: (1) Due to the highly technical content of the direct testimony, opposing counsel were frequently caught by surprise and forced to request recesses in order to familiarize themselves with this testimony for the purpose of cross-examination, and (2) extended cross-examination with no apparent purpose in mind arising from the confusion of counsel as to the significance of the direct testimony. Government counsel recalled that during the hearing frequently attorneys would cross-examine witnesses upon insignificant points while fellow counsel and experts were examining the direct testimony in great detail, outside the hearing room, for the purpose of detecting defects in it. This sort of idle cross-examination obviously encumbers the record.

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3. Statement of John L. Sullivan, member, Chief Justice's 1949 Advisory Committee on Administrative Procedure.

4. *Atlas Powder Co.* v. *United States.* 201 F. 2d 347 (1952).

II. The Interstate Commerce Commission

I refer here to two cases: *The Board of Trade* v. *United States*[5] and *New York* v. *United States.*[6]

On September 30, 1926, the Commission initiated a comprehensive investigation into the freight rates and practices affecting grain and grain products in Western United States. Hearings were held resulting in a record of *53,000 pages of testimony, including 20,100 exhibits and 20,000 pages of memoranda, exceptions, and oral arguments.* So much time was consumed in completing the hearing that in 1937 a supplemental hearing was held which involved more than *7,000 pages of new testimony and 250 new exhibits.*

The *New York* case, usually known as the "Uniform Classification Case," involved *5,500 pages of testimony and 12,000 pages of exhibits.* The main issue was whether freight classification rates established by the Commission discriminated against the South and West in favor of the North. As in all interstate commerce cases where the records were extremely long, the issues were complex and hotly debated among opposing members of industry, states, and various other organizations and groups which might be affected by the ICC order.

The Commission's attorneys are of the opinion that two factors contributed to the length of the records in these cases. One was the problem of numerous intervenors which made it impossible to keep the record within reasonable limits and the second was unbridled cross-examination.

Commission attorneys feel that there is little that can be done to reduce the testimony resulting from the large number of parties and the important issues involved. They are of the opinion that all parties of interest must be heard and that the opportunity for full cross-examination must be extended to each party.

III. The Civil Aeronautics Board

The case of *Air Freight* v. *American Lines et al.*[7] was a consolidated proceeding upon a number of applications for authority to engage in air freight operations (new routes) throughout the United States.

The record in the case was composed of approximately *30,000 pages of transcript.* Fourteen parties filed application for the certificates of public convenience and necessity authorizing the transportation of property, 13 existing carriers filed petition for intervention, and there were 32 state, municipal, and private organizations who also filed petitions to intervene.

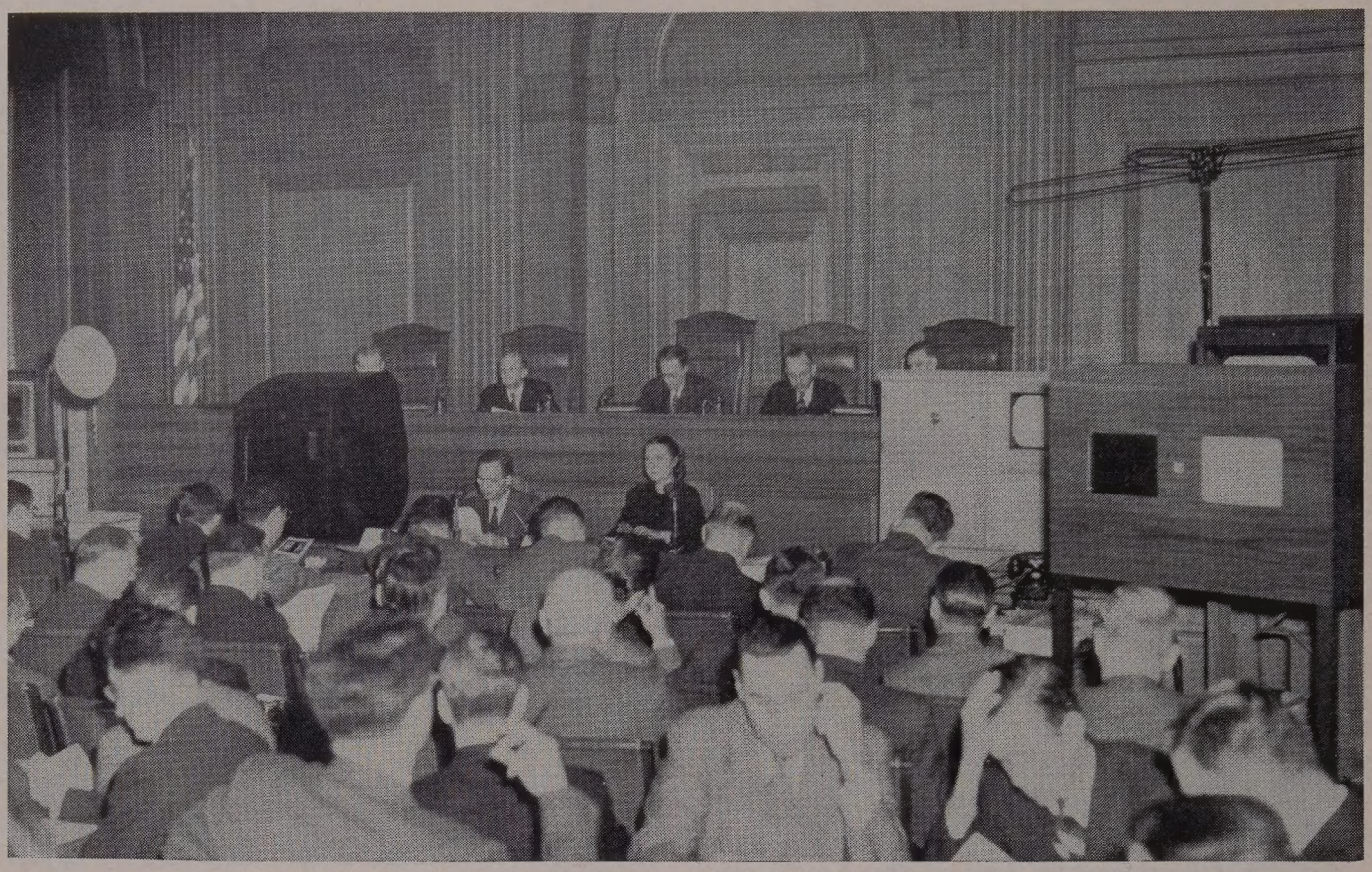
Board attorneys here feel that there were four factors which contributed to length of the record. These were: (1) numerous intervenors, (2) the duplication of evidence as a result of the unlimited number of intervenors, (3) needless cross-examination and duplication of cross-examination, and (4) the complexity of the issues of the case.

By virtue of the statute under which the Civil Aeronautics Board operates, the right is given to any person to intervene where his interest may be at issue. Under such board rights of intervention it is the opinion of the Board attorneys that it is impossible to narrow and restrict the scope of hearings. It is feared that any attempt to consolidate the efforts of various attorneys representing similar but distinct parties in interest would meet with considerable opposition from the American bar. With reference to relevant and irrelevant testimony and cross-examination, the usual position of a trial examiner is shrouded in a dilemma. He is at one and the same time commanded to reduce the size of the record and precluded from limiting cross-examination or excluding testimony which might conceivably bear upon the points at issue. It is the opinion of the Board attorneys that the only satisfactory means of reducing the size of their record would be to

5. The *Board of Trade* v. *United States*, 314 U.S. 534 (1941).

6. *New York* v. *United States*, 331 U.S. 284 (1946).

7. *Air Freight* v. *American Lines et al.*, 192 F. 2d 417 (1952).



A SCENE snapped in the course of the lengthy hearings before the Federal Communications Commission in the color television case. Here the Columbia Broadcasting System is utilizing a federal court room to stage a demonstration of its color transmission system before the F.C.C. hearing officers.— WIDE WORLD PHOTO.

limit the number of intervenors in some fashion.

IV. Federal Communications Commission

In *Radio Corporation of America et al.* v. *United States*[8] the hearing before the Commission lasted eight and a half months. Fifty-three witnesses were heard and *265 exhibits were received. The transcript of the hearing covered 9,717 pages.* The case involved the question of which one of three proposed color television systems would be adopted by the Commission. During a three months recess of the trial extensive field tests were made of the three color television systems, and progress reports concerning these tests were filed with the Commission. The hearing developed in a contest between CBS and NBC.

Commission attorneys are of the opinion that the factors which contributed to the great length of the record were (1) extensive cross-examination which composed one-half of the record, and (2) the reading of statements by various witnesses into the record before the Commission. Commission attorneys are further of the opinion that statements which were read during the hearing could have been submitted to the Commission in advance and that cross-examination could have been limited.

V. Federal Trade Commission

In *Cement Institute* v. *The Federal Trade Commission*[9] the hearing involved a *tremen-*

8. *Radio Corporation of America et al.* v. *United States*, 341 U.S. 412 (1951).

9. *Cement Institute* v. *The Federal Trade Commission*, 268 U.S. 588 (1924).

dous record of some 50,000 pages of transcript. Two factors contributed to the protracted length of this hearing: (1) The vast amount of economic evidence given by expert witnesses, and (2) the difficulty arising from the authentication of documents.

With respect to the economic data, the attorneys question the relevancy of the significance of economic factors where the issues of fact are to be considered in the light of an alleged restraint of trade. With respect to the authentication of documents, the attorneys believe that the discovery procedures should be altered, to permit the Commission to *compel* authentication of documents in the defendants' possession.

Before I leave the subject of administrative agency hearings, may I specifically refer to an extraordinary one which recently came to my attention.

Before the ICC, in the matter of *United States* v. *Aberdeen & Rockfish Railroad Co. et al.*,[10] a certain Assistant to the General Traffic Manager of a certain railroad (not the Aberdeen & Rockfish!) was about to testify as a rate expert. Apparently he was not a lawyer. *Before* he took the stand, his testimony, in question and answer form, (all 56 mimeographed pages of it) was *handed out* to interested parties in the hearing-room by his lawyer!

After qualifying as a non-legal expert, counsel asked him if he had examined a certain judicial opinion. The following then appears:

> Q. Will you now outline in what respect the Court's appraisal of the evidence is, in your opinion, erroneous?
>
> A. First, the Court failed to correctly state the nature of the controversy and the issues involved: At page 2 it quotes from the Supreme Court's description of the background, as follows:
>
> (Four-line quote from Supreme Court.)
>
> [Witness, continuing] That is an incorrect statement.

Thus we find that the principal shortcomings found in administrative agency hearings have a faintly familiar ring to ears more familiar with court-room procedures. Summarized they are:

FIRST: *Unbridled, or at least uninhibited, cross-examination, with the accompanying failure of agency hearing officers to exclude irrelevant and immaterial evidence.*

SECOND: *Failure to utilize pre-trial or pre-hearing procedures.*

THIRD: *Cumbersome methods of presenting scientific and economic evidence.*

In short, we must conclude that busy administrators, like busy judges, tend to be poorly informed as to what procedures others have devised for expediting public business.

At this point, some remarks recently made by Judge Prettyman, chairman of the Conference on Administrative Procedure[11] seem pertinent:

> "For years eminent private counsel have railed at government hearings officers and trial attorneys for inordinate delays and inexcusably voluminous records in administrative adjudicatory proceedings. Conversely, for the same years and for the same reasons, government hearing officers and trial attorneys have railed at eminent private counsel. There was much to be said on both sides.
>
> 'The matter has increased in importance, importance to government, importance to the bar, and importance to all manner of people in the workaday world. American business, industry, labor and government have become complicated. Their routine problems are complicated. Thus far the legal profession and the rules adopted by it have been the instru-

10. *United States* v. *Aberdeen & Rockfish Railroad Co. et al.*, Interstate Commerce Commission Docket #29117.

11. Breakfast address at ABA Session in Boston, August, 1953.

ments in use for the solution of those disputes. Not too much difficulty is had in respect to lesser controversies. But it has become increasingly apparent that, in vast fields of the complex physical sciences and the economics in which business is now accustomed to operate, the time-honored processes of the judiciary and the administrative agencies alike creak and groan and all but stop entirely. To some this already spells abandonment of those processes and the substitution of new devices for adjudication. To me no such eventuality is necessary.

"I say with emphasis that, if you imagine the American businessman or labor leader will forever put up with processes which do not function with the accuracy and expedition which he requires for his working purposes, you credit him with less ingenuity and independence than I do. He will not continue to pay a hundred thousand dollars for a product he knows is worth only ten thousand, or repeatedly wait years for a decision he knows could be reached in weeks, or indefinitely permit disputed issues to be buried in an ocean sand of irrelevancies and thus lost instead of being decided. I know of no reason why he should do so . . . as I see it the legal profession still has ample opportunity, but the time is rapidly coming when it must fish, cut bait, or go ashore."

More Efficient Procedures

The solution to whatever delays exist in the administration of justice is not to be found, therefore, either in more judges, *or* in the creation of more administrative agencies. A substantial contribution can be made by the legal profession toward a solution by the removal of the burdens placed upon our courts and litigants by protracted litigation. And so the bar must assume the responsibility for giving to both the courts and administrative agencies that careful, meticulous, never-ending, continuous effort to improve, to clarify, to refine. This is the effort we find in our state bar committees, in our judicial conferences, our committees to study administrative law procedure, and our national committees to study both substantive and procedural changes in specific areas of law. The Federal Rules of Civil and Criminal Procedure are products of such careful and tireless approaches.

As an example of what can be accomplished in this respect, let me take a moment to point out the experience of the Antitrust Division in implementing the report of the judicial conference on "Procedure in Antitrust and Other Protracted Cases." In one case, *United States* v. *C-O-Two Fire Equipment Co.*, which was tried in the Southern District of California, extensive use of stipulations concerning undisputed facts and admissibility of documents shortened the period required for trial from an estimated three to four weeks to one and one-half days. In another case, tried in Philadelphia, *United States* v. *National Football League,* the Government and the defendants made extensive use of interrogatories and stipulations, in the absence of which the defendants would have been required to produce financial and statistical records of the twelve member clubs for a period of at least five years. In a case presently pending, I am hopeful that an estimated two weeks' case can be submitted upon an agreed statement of facts – trial time one hour. (This will not solve the problem of the judge's work in chambers, but it will give him more time to work there!)

The experience of the Antitrust Division in these and other cases indicates that the use of the recommended procedures has had a salutary effect in simplifying the trial of antitrust cases. And we learn that these temporary milestones can be achieved only through the constant and thorough study of particular specific problems arising in day-by-day practice effected by competent lawyers on both sides.

But such projects are not the only means

that can be used to resolve the delays in the administration of justice. Our law institutes, our continuing legal education programs, our forums and institutes in law schools, the work of the American Judicature Society and of the new Institute of Judicial Administration in New York – all these are important ingredients for an intelligent solution to our problem.

Participation by members of the legal profession in such programs as these can do much to give them an insight into the numerous substantive and procedural problems which arise in the course of specialized litigation. Realizing what the problems are, the lawyers can then make a real contribution by assisting the court in the simplification of trials and the practical disposition of cases which otherwise consume long periods of time. I am delighted to note an increasing amount of participation by the legal profession in the many expanding legal institutes being conducted by the law schools in this country.

Thus we, as lawyers, can say with some truth that we are meeting our professional problems – at least we are at grips with the enemy – we have not turned to run – nor passively acquiesced in accepting what some have described as a breakdown in the administration of justice in our lifetime. We have not won the battle, but we have met the challenge. But is that sufficient: Is the bar doing enough? Can we not turn to a larger, a nobler, challenge?

The Nobler Challenge

Do we not all feel in moments of serious contemplation that the legal profession somehow is not measuring up, in the aggregate, to the standards we would hope could exist amongst us, as officers of the court? Is there not too much preoccupation with financial returns, and too little with the standing of our profession in the community? Do we really object to the practice of law by laymen so that we may protect the public, or do we object to protect the bar from competition?

These days are, without doubt, times of peril. As a noted writer recently said, in developing a perspective for such perilous times: "Unless we rise to greatness, and lift our answers to a nobler plane, our fate will be the fate of the dreary list of nations that preceded us in history – nations that identified possessions with social value and physical power with the good life."

In times of peril, such as these, it behooves us all, lawyer and layman alike, to rise above the motivation of self-interest to a nobler plane of worthy public service. Whether we operate in the classroom, in the courtroom, in the administrative hearing, or in the privacy of our offices – we must come to realize that each of us bears in a great measure the responsibilities akin to those of a public service. And the responsibility of citizenship so peculiar to our profession rests to a high degree in the maintenance of our free legal system and in the effective enforcement and administration of our laws. If we so conduct ourselves as to teach by the word and by the pen, and more so by our example, the values inherent in our free legal institutions, we will have served our day and age in a manner more noble than even the advocacy of our clients' causes.

At the dedication of the new law school building at the University of California (Los Angeles) a year or two ago, Roscoe Pound, the distinguished Dean Emeritus of Harvard Law School, made a significant address. In urging a broader public service for the law school, he said:

" . . . to teach law in the grand manner means also to raise up lawyers as conscious members of a profession: As members of an organized body of men pursuing a common calling as a learned art in the spirit of public service – no less a public service because it is incidentally and so only secondarily a means of livelihood."

But public service must not be limited to

a classroom! Practicing lawyers were once in our country's history, and now should be, the largest single influence in American education. You might say, however, how can we teach and what shall we teach that we may fulfill our obligations in this respect? The answer is simple. In our dealings with our clients, in our advocacy in the courtroom, in our contacts with other lawyers – yes, in every activity in which we participate, we can teach by our conduct and by our example. We can teach those fundamental, simple truths that ours is a government of laws, not of men; that under our constitution all citizens enjoy equal rights and assume equal obligations: That laws must be observed and respected; and that we must not encroach upon the rights of others in the exercise of our liberties nor impair the general welfare or the national security. These were and are the simple, immutable principles upon which free governments are based. If we advocate and teach and practice these principles in our daily lives, we will be making brilliant progress toward the protection of our free democratic institutions.

A great and good judge, Chief Judge John J. Parker of the Fourth Circuit, summarized my thoughts well, when, after stating that self-interest *should* stimulate the lawyer's desire to see that justice was administered in an efficient, businesslike way, indicated that there is a higher ground upon which he would base his appeal to the law fraternity. He then said this:

> "If democracy is to live, democracy must be made efficient; for the survival of the fit is as much a law of political economy as it is of the life of the jungle. *If we would preserve free government in America, we must make free government good government.* Nowhere does government touch the life of the people more intimately than in the *administration of justice.*"

This, then, is the nobler challenge!

Bench and Bar Calendar

June

23-26—North Carolina Bar Association, Wrightsville Beach.
24-26—New York State Bar Association, Saranac Inn.
25-26—Bar Association of the State of New Hampshire, Hanover.
25-26—Massachusetts Lawyers' Institute, Swampscott.
27-30—Judicial Conference, 4th Circuit, Hot Springs, Va.
30-July 3—State Bar of Texas, San Antonio.

July

8-10—Idaho State Bar, Sun Valley.
12-14—Judicial Conference, 10th Circuit, Estes Park, Colo.
15-17—Alabama State Bar, Montgomery.
18-21—Commercial Law League of America, Miami Beach, Fla.
19-24—Fifth International Conference of the Legal Profession, Monte Carlo, Monaco.
22-24—Montana Bar Association, Billings.

August

5-7 —State Bar Association of North Dakota, Grand Forks.
12-14—Virginia State Bar Association, White Sulphur Springs, W. Va.
16-20—American Bar Association, Chicago, Ill.
19 —American Judicature Society, Chicago.
24-26—Maine State Bar Association, Rockland Breakwater, Rockland.
26-27—State Bar of South Dakota, Huron.
26-28—West Virginia Bar Association, White Sulphur Springs.
28-Sept. 2—National Association of Claimants Compensation Attorneys, Boston, Mass.
30-Sept. 4—Canadian Bar Association, Winnipeg, Manitoba.

September

2-4 —Washington State Bar Association, Spokane.
8-9 —Judicial Conference, 3rd Circuit, Atlantic City, N. J.
10-11—State Bar of New Mexico, Ruidoso.
10-12—Oregon State Bar, Eugene.
17-18—West Virginia State Bar, Elkins.
19-22—National Probation and Parole Association, Swampscott, Mass.
22-24—State Bar of California, Coronado.
22-24—State Bar of Michigan, Grand Rapids.
23-25—Missouri Bar, St. Louis.
23-25—Indiana State Bar Association, French Lick.

October

11—Rhode Island Bar Association, Providence.
14-17—Colorado Bar Association, Colorado Springs.
21-22—Nebraska State Bar Association, Omaha.
22—North Carolina State Bar, Raleigh.

November

7-10—National Municipal League, Kansas City, Mo.
17-20—Oklahoma Bar Association, Tulsa.

Lawyers and Judges and Legal Aid

By

JUSTIN MILLER

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IN order to proceed constructively in the extension of legal aid services, it is necessary to determine separately for each community, first, what the community needs in the way of legal aid; second, what legal aid the community can reasonably be expected to support; third, how to go about organizing and maintaining an appropriate legal aid organization and making it function; fourth, what lawyers and judges can properly be expected to do in the carrying out of such a program; fifth, how to secure the fullest cooperation of judges and lawyers to this end.

It is possible and proper for lawyers and judges to participate in each of these five steps. Certainly no one is better qualified than they to participate in a survey to determine the extent to which the inhabitants of the community are failing to receive adequate professional service in the administration of justice. Certainly they can give pertinent advice, and participate in fair judgments, as to the capacity of the community to support legal aid service. Certainly some lawyers and judges are available who know how to go about the organization of an appropriate legal aid organization; and all lawyers, in greater or lesser degree, can advise and assist in its maintenance and functioning.

Before we go on from this point, let us stop to pay tribute to the members of the bench and bar who have pioneered in this important work and who constitute its mainstay in the various communities throughout the United States. Of them it should be said that they need no persuasion, but instead, the most hearty thanks and commendation.

But unless it were possible to assume a scope and perfection of legal aid work in this country far beyond what actually exists,

we could not say that our profession has measured up to its responsibility. What I shall say, then, will apply to the existing situation and to those who have not measured up.

What Lawyers and Judges Can Do

Before we begin to consider ways and means of securing increased lawyer-judge cooperation in legal aid, we should understand clearly what they can and cannot properly do. Let's list some of these considerations.

1. Both lawyers and judges can serve on committees set up in connection with legal aid – for example, the governing body in the community which sponsors, directs, controls the work of the legal aid office itself. This should not be a perfunctory service, but one of very live interest which calls for regular attendance at meetings, active participation in the management of the office as in selecting personnel, determining management policies, creating and maintaining proper community contacts with governmental, civic, church and other organizations which are concerned with the successful operation of legal aid work.

2. Both lawyers and judges may properly contribute funds. At this point, however, their ways part. While both can properly contribute and while the lawyer may actively participate in the solicitation of funds, the judge is prohibited by the Canons of Judicial Ethics from participation in such solicitation, no matter how worthy the cause may be.

3. A lawyer may give actual service to the legal aid office. This, of course, cannot be done by the judge. So far as the work of the office is concerned, it could be widely expanded if it were possible to supplement the work of the staff by calling in lawyers who have agreed to make themselves available for such services in particular cases. There are occasions when even the specialist may help in cases involving domestic relations, the administration of estates, guardianship, adoption and other such situations well known to the legal aid office. Frequently, this type of service does not involve court action, but may involve the kind of office consultation or negotiation which constitutes a large part of a lawyer's practice. While most busy lawyers would not be available for actual office participation in legal aid work, there are, no doubt, some who would be willing to have reference made to them from time to time of particular individuals or of particular cases.

4. Where, in a community, the legal aid office is engaged in the defense of criminal cases, lawyers can be made available for the handling of such cases and, at this point, cooperation with judges may be worked out. In the county in which I was district attorney, in California years ago, it was the traditional custom for every member of the bar, in alphabetical order, to take his assignment in defense of persons accused of crime who were unable to employ counsel. In that county, this was a very wholesome and salutary practice, not only in providing service for accused persons, but also for keeping every member of the bar acquainted with the administration of criminal justice and thus alert to the needs of corrective legislation, improvement of court rules and the development of supplementary procedures such as probation, juvenile courts and parole.

In some places the legal aid office does not provide assistance in criminal cases. In the larger California counties, for example, public defenders take over this assignment. In other places this *is* regarded as a legal aid function. Thus, the Criminal Courts branch of the New York Legal Aid Society, in 1951, handled a total of 16,658 cases. In Part One of the Court of General Sessions, where defendants are arraigned for pleading, the Society received 83.8 percent of all assignments made by the Court in cases where the defendants lacked financial means to employ counsel. In the larger cities and counties of the country, the statement of Judge Augustus Hand, recently quoted by Attorney General Brownell, may be correct. Judge Hand said: "To call on lawyers constantly for

unpaid services is unfair to them and any attempt to do so is almost bound to break down after a time. To distribute such assignments among a large number of attorneys in order to reduce the burden upon any one is to entrust the presentation of the defendant to attorneys who in many cases are not proficient in criminal trials, whatever their general ability, and who for one reason or another cannot be depended upon for an adequate defense. Too often, under such circumstances, the representation becomes little more than a form."

Assuming the correctness of the foregoing argument, lawyers and judges could make a great contribution to legal aid by supporting the proposal of Attorney General Brownell for a country-wide system of public defenders. In the absence of such a system, qualified lawyers can make a very real contribution by responding to legal aid society assignments in occasional criminal cases.

Letting Them Know

Now let us get down to specifics – ways and means – for securing more effective relations with bench and bar. The first specific is that we secure greater understanding of the need for legal aid; and the first requirement to this end is that we bring the light of legal aid out from under the bushel, where it customarily hides. Ask any judge or lawyer – not closely associated with legal aid – whether it is functioning properly in his community. He will probably respond: "Oh yes, we have a splendid set-up; a conscientious staff, good community support and the community's needs well taken care of." Now this is a proud and pleasant boast. But is it true? And if not, why do we get such responses? Whose fault is it that such lawyers and judges have such ideas? Does legal aid here and elsewhere have all the support, financial and otherwise, which it should have? Is legal aid accomplishing all that it should, here and elsewhere?

Take the District of Columbia, for example. Emery Brownell has recently completed a survey in the District of Columbia. After paying tribute to "the unselfish men and women who have been responsible for the founding of the Bureau and those who have guided it through more than twenty years of growing usefulness" and to the many lawyers "who have given countless hours of service," he goes on to say that approaching the subject "strictly from the point of view of the people in the District of Columbia who need Legal Aid Service": "The inescapable conclusion is that despite the very large measure of service being rendered by the Legal Aid Bureau and the Municipal Court service of the District of Columbia Bar Association, the full need is not being met. The shortcoming, and it is a serious one, is more in the extent and range of legal service afforded than in the number of cases handled, or the Bureau's form of organization and policies. Various recommendations for the needed strengthening of the service have been offered in the body of this report. Summed up, they constitute a realizable four-point program that would bring benefit to the community and to the bar far beyond its modest cost: (1) More acceptance of responsibility on the part of the organized bar for a comprehensive Legal Aid program; (2) a governing body that is broadly representative of the entire community and includes both lawyers and non-lawyers; (3) more adequate financial support; (4) more paid staff, the minimum immediately needed being the equivalent of one additional full-time lawyer and an additional full-time clerical worker."

I am sure the situation in other places is no better, or even worse, than here. I am sure, also, that most lawyers and judges in the District would be startled to hear this report. Now, what to do about it? Obviously the first thing is to let them *know* of the great unsatisfied need and the dangers of letting that need go unsatisfied. How can this be done?

Shall we assume that the legal aid attorney, or his staff, will do it? Well, frankly, aren't they pretty busy taking care of their regular duties? Frankly, why should we expect them to shoulder the whole burden? What we need

are a few well-recognized judge-lawyer spokesmen who are fully informed, ready speakers and writers, uninhibited by restrictions under which staff people work, who can tell the story with zeal and enthusiasm, and who can get and hold the ear of the community in terms of present community problems and interests.

"First Catch Your Rabbit"

The next question is where shall we find such lawyers and judges to take such leadership and how shall we inspire them to do it? When I was a child there was in vogue a recipe for making rabbit pie, which began: "First catch your rabbit." So long as legal aid remains unrecognized by many lawyers and judges it behooves us to follow the same prescription and discover those members of the bench and bar who understand and subscribe to that fundamental principle of the legal profession that every person is equal before the law and is entitled to an even measure of justice, without limitation, regardless of race, color, religion or economic or social status. To such lawyers and judges the concept of legal aid appeals naturally. To them it is merely a matter of finding their proper places in the program. It is among these lawyers and judges that we will find the champions upon whose cooperation we must depend.

The prescription to be followed, here, goes something like this. Go through your list of lawyers and judges and select one who, first, has the respect and admiration of the bar and the community; second, who believes that it is the responsibility of lawyers to render a large measure of service in the public interest; third, who speaks and writes well and whose name on a program will insure a substantial and responsive audience; fourth, whose counsel is eagerly sought on civic committees of the bar association; fifth, who is young and vigorous enough to carry a real assignment such as this; sixth, who believes conscientiously in the principle of equal justice before the law, for rich and poor alike. Then, you should follow a sales program to convince your man, first, that legal aid needs are not satisfied in the community; second, that in order to secure the necessary results, a real champion must be found who will adopt the project as his number-one extracurricular activity, with priority over every other one, which is not strictly an obligation of his own professional life; third, that the assuming of this extracurricular activity must be on a long-time basis; fourth, that *he* is the man.

When this man has been persuaded to accept the assignment, he should be allowed to select his own committee of similarly qualified men to work with him; he should be assured sufficient staff support to relieve him of concern for administrative and financial details; his job should be to educate the bar, the community, the press, the Community Chest, the social workers, the clergy and all other interested persons. Perhaps this is the point of greatest significance because it is in the community that legal aid proves itself. Unless the people who are to be served know of its availability, obviously they cannot be served. They must know what kinds of troubles can be solved; they should know where to go and whom to see in order to get help. The community should know of benefits which can accrue from legal aid work well done, and how it can be best integrated into the life of the community – otherwise it will lose one of the most potent remedies for social disorder.

Your legal aid champion should be supplied with statistics and other speech materials; he should have staff assistance to give him answers to all questions concerning legal aid and all objections to it. He will learn quickly that certain objections may be taken for granted and that certain antagonistic vested interests exist in every community, which fear legal aid and put obstacles in its way. He must school himself in ways and means of eliminating such prejudices and of building up good will and cooperation in their place in order that concrete support can be obtained from these very sources. Otherwise such objections unanswered, and such vested interests undemolished will per-

vade the community and devitalize the program.

Overcoming Prejudices

For example, some lawyers and judges have never subscribed to the principles of equality and equal justice, even though they have taken oaths of office in which they pledged themselves to observance of those principles. These men really subscribe in their hearts to the medieval concept that people who are unable to retain lawyers should be discouraged from seeking the protection of the law; that – if they do insist on setting the wheels of justice in motion – they should be required to file affidavits *in forma pauperis*, and be given short shrift in their "day in court."

At a time when the problem of the mentally ill is assuming such large proportions, it seems fantastic that we should first require such a psychological abasement and should place such a stultifying hurdle in the way of people who seek the protection of the law. At a time when we have been challenged to prove that ours is a superior form of government and a better way of life than that of the dictators and authoritarians of many breeds, it seems incongruous that men should stick stolidly to such obsolete doctrines. But these are the attitudes which our champion must be prepared to surmount.

To a large extent the remedy lies in better legal education and more careful selection for admission to practice. From the long-time point of view, this involves encouragement of legal aid clinics in law schools and greater emphasis upon the obligations – as contrasted with the perquisites – of the profession. But for the present there are other short-range approaches which are sometimes successful in overcoming such prejudices.

Thus, to the lawyers it can be argued that whatever his beliefs upon the subject may be, nevertheless the people are coming increasingly to expect that *all* professions shall assume such obligations and perform such services; that if he doesn't want to perform them himself, he should at least be willing to contribute, financially.

To the judge it can be suggested that a great deal of his time in court could be saved and his work expedited if he were not required to spend his energies upon the appearances, *in propria persona*, of ignorant, illiterate and mentally unbalanced persons. Moreover, his attention can be called to the fact that if adequate legal aid is provided, he need not suffer so many reversals by the Supreme Court, which has become increasingly insistent upon full and adequate representation by counsel. The hundreds of habeas corpus cases which are finding their way into appellate courts are evidence of this fact.

Legal Aid and Socialization

Again, we hear that some lawyers and judges protest against legal aid on the theory that it represents a trend toward "socialization of the law." To them the answer must be given – by some kind friend who enjoys their respect and confidence – that the only way to prevent "socialization" of professional services is for the profession to *assume* such responsibilities as that of legal aid. "Socialization" so-called, does not come from *voluntary* professional activity. It comes from *governmental* activity, when the profession fails to assume its proper responsibilities and when the people, therefore, demand and achieve legislative action to remedy the situation. Socialization of legal aid has actually *come* in England and it will come in this country, too, if we lawyers do not prevent it by anticipating such governmental action. It would be hard to imagine more stupid blindness, to the realities of present-day governmental trends, than to sit stolidly on our benches and try to preserve old traditions of star chamber and class stratification, reflected in such attitudes.

It has been said that the very rich and the very poor are those who receive the best medical treatment in this country. The medical doctors have long realized the dangers

and have already taken professional steps to avoid encroachments of restrictive legislation.

What have lawyers and judges done which is in any way equivalent to the work of the medics in public health and preventive medicine? Consider the present juvenile delinquency situation in the District of Columbia. To what exent is this situation attributable to failure of our profession to recognize the problem and contribute to its solution? How many cases of delinquency may be attributed to domestic-relations situations, to mental illness, to illegitimacy, to improper adoptions and child-placements, to broken homes, to the activities of loan sharks, to ill-considered laws concerning child labor and education? To what extent have lawyers assumed professional responsibility for such community ills? These are the sort of considerations which will force legislative action in the field of law administration if we fail to show sufficient imagination and action for their correction. These are the areas into which we should be projecting skilled professional research and action. If your judge and lawyer fear socialization of the law, let them be alert to present problems and present trends. If they are incapable, personally, of participating in such research and action, then for the preservation of the profession, its independence and prestige, let them at least cease their destructive opposition; let them at least pay lip service to such activities as legal aid and let them contribute to its program financially.

Does Legal Aid Compete with Lawyers?

Another objection, which comes from some younger lawyers and the marginal producers of our profession, is that legal aid serves clients who might otherwise pay fees. The answer, of course, must be made widely known, i.e. that legal aid organizations do not service such clients; that a constant process of selective screening takes place to discover those who are not qualified for legal aid service. If this selective process is not functioning properly, it can be remedied by cooperative action between the legal aid office and the Bar. Sometimes this can be worked out to the complete satisfaction of all concerned. Sometimes it results in discovering that some lawyers are preying upon poor clients by means of blackmail and other forms of coercion. These are matters which should have the light turned on them; again for the protection, not only of poor people, but of the profession itself.

Sometimes a lawyer thinks, honestly, that legal aid – or the reference service in use in some places – may prevent his getting a relatively poor client who may later develop into one of substantial means. This is a real question and one which deserves working out on a cooperative basis.

Again, we find lawyers who think – or at least argue – that legal aid is a form of charity which the community, generally, should provide. The answer, here, is a double-barreled one; first, that lawyers are a part of the community and hence have responsibility at least equal to that of other citizens; second, that this is, instead, a special professional obligation of the lawyer, and that the lawyer should be willing to provide additional support, if necessary, beyond that provided from the Community Chest. This is particularly true when a legal aid organization is just getting started, because the Community Chest will not take on a new organization until it has proved itself.

This argument, by the way, is one which should constitute a warning to us, not to pitch our own sponsorship of legal aid on a charity or *in forma pauperis* basis, or to present our case in an apologetic manner. We should present it, instead, on the basis previously suggested; a professional responsibility, arising from the most fundamental principle of our jurisprudence, which indeed constitutes the reason for our professional existence – equal justice before the law – a responsibility, which properly assumed and carried out, constitutes, perhaps, the best justification for our way of life as contrasted with that of Communism or the other totalitarian forms.

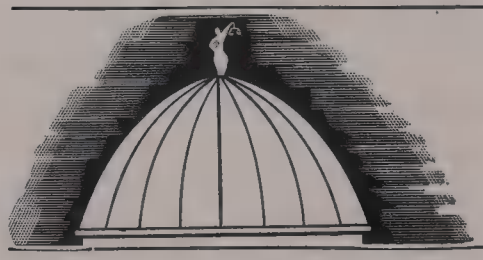
This concept is one which is not well understood by many lawyers and, of course, is unknown to many lay people. For this reason, one of the most important and effective services which could be performed by lawyers and judges – working under the leadership of such champions as described in my "prescription" – would be the sponsoring of legal aid work in the community, by addressing churches, civic organizations, fraternal societies, etc. etc., concerning the need, the purposes and the methods of legal aid work. This could well become the extra-curricular activity of several active members of the Bar who would soon become so well known in the community and so familiar with their subject that they would be called upon increasingly to speak before organizations which are constantly looking for good speakers upon all sorts of important community problems.

It Can Be Done

Do you think that I have spoken too enthusiastically of the possibilities toward which we may reasonably expect to work? If so, consider an example of achievement which I shall use in conclusion, to point up the validity of my analogy "first catch your rabbit." At the recent annual meeting of the California State Bar, Chief Judge Bolitha Laws, of the United States District Court for the District of Columbia, told of this interesting experience: When Judge Laws was President of the District of Columbia Bar Association, he appointed committees of the Bar to work with the appellate courts and with the trial courts, in advancing the administration of justice. Much to his chagrin and disillusionment, when these committees made their contacts with the judges of the respective courts they were told by the judges that the courts were getting along very nicely, and were sent on their way with the admonition that the judges needed no help from the members of the bar other than that they do better work in the preparation of their cases, briefs, etc. etc. Later, when Judge Laws, himself, went on the bench – working in splendid cooperation with Chief Justice Harold Stephens of the United States Court of Appeals for the District of Columbia Circuit – cooperating committees were set up which have proved strikingly successful in achieving really remarkable improvements in the administration of justice. This work has been done by very carefully selected groups of judges, lawyers, and laymen who have knowledge of the problems involved; are willing to devote time to their solution, and are capable of team-work in approaching and solving such problems.

Sometime I hope you may have the pleasure of hearing from Judge Stephens or from Judge Laws the story of the long campaign for the new federal court building, with adequate facilities to replace the antiquated century-old facilities of the six or seven buildings through which the federal courts and their many collateral agencies were then scattered; an achievement, credit for which goes largely to these committees of which I have spoken – sometimes taking the lead, sometimes back-stopping the efforts of Judge Stephens and Judge Laws, on Capitol Hill, through news stories and editorials and in many other ways available to an aroused citizenry. And this is only one of several achievements.

And so, let me emphasize, again, in conclusion that the most important phase of promoting effective relations with bench and bar in developing legal aid programs is the recruiting of judges and lawyers who will become zealous champions, among their fellows and in the community; men and women who – working with equally well-selected laymen – can change the whole climate of legal aid in a community and make it serve the purpose for which it is intended.



Judicial Administration Legislative Summary

All phases of Maine's court system will be studied by a 12-member State Judicial Council appointed by the Governor. He made the appointments under a 1935 state law, never before invoked, and suggested that one phase of the study might well concern the state's system of indicting persons accused of crime. During the last three years numerous persons have been discharged before trial because of flaws found by the courts in indictments. All Maine courts from the Supreme to the Municipal are subject to the council's study.

The so-called Metropolitan Court Plan for Detroit, Michigan, under which circuit, recorders, traffic and common pleas courts would be combined and given equal jurisdiction, has been tabled until the 1955 session of the legislature. This was done at the request of the Common Council of the City of Detroit in order that they might be able to further study the bill.

A resolution recently introduced in the Kentucky legislature would direct the State Judicial Council to investigate divorce laws with an eye toward establishing "family courts" in the state. Final approval was given a resolution directing the State Legislative Research Commission, in cooperation with the State Judicial Council, to conduct a study of the state's entire court system.

Creation of a new statewide juvenile court system in Massachusetts has been proposed by a special study commission. This legislation has the support of Governor Herter, who recommended adoption of the plan in his opening message to the legislature in January. The plan calls for creation of nine judicial districts covering the entire state, with a juvenile judge at $13,000 a year to preside in each district.

Failing of legislative enactment was a State Judicial Council recommendation for expansion of the functions of the Rhode Island Domestic Relations Court.

The Wisconsin Judicial Council is considering a proposed state constitutional amendment providing for an integrated court system that would consist only of circuit court branches and the State Supreme Court. New circuit court branches would replace county and municipal courts and justices of the peace. The system would be effective in January, 1962. The council has not yet given final approval to the reorganization plan to be recommended to the legislature. Any new system would require changes in the constitution. No change can be made without approval by two successive sessions of the legislature and a popular referendum.

Virginia legislation included a resolution calling for a study of circuit courts in an effort to determine where new courts may be added. Final passage was given a bill to merge Richmond's two Law and Equity courts into a single three-judge court.

Bills to revise Baltimore's police and traffic courts, staff them with full-time magistrates, and put them on a full-time basis were introduced in the Maryland legislature.

The New York legislature deferred action for at least a year on recommendations by the Temporary Commission on the Courts, an interim study group, for creation of a new Judicial Conference composed of the state's top judges, and under it an office for court administration headed by a statewide director. The commission, which was created by the 1953 legislature to study the state's judicial system, made its recommendations in a preliminary report. More comprehensive court reorganization proposals will follow completion of its studies. The proposed conference is designed as a step toward modernization of New York's century-old judicial system to help the judges deal effec-

tively with such problems as congestion and delay in the courts and the high costs of litigation and appeal, which have been the subject of criticism from the public, the bench and the bar.

Criminal Law Revision Proposals

Proposals for revision of Montana criminal laws to make it easier to obtain convictions and to give judges greater discretion in imposing conditions for suspending sentences are being prepared for submission to the 1955 state legislature. Details are to be further discussed at the midsummer meeting of the Montana Bar Association and a November conference to be conducted by the state's district judges at Helena.

Killed by a special legislative session was a resolution proposing a State Legislative Council study of criminal law reforms in Texas. Enacted, however, was a bill creating 10 new district courts in the state to help relieve congested dockets. The courts, which were advocated by the Governor, automatically expire August 31, 1956, unless renewed by the state legislature.

Judicial Salaries

A bill to increase the salaries of the nine justices of the State Supreme Court was defeated by the Mississippi House of Representatives. The bill would have boosted the salaries of the justice from $11,000 to $12,500, with the pay of the chief justice increased from $11,000 to $13,500.

The Kentucky legislature enacted a bill raising the pay of six judges of the State Court of Appeals from $9,000 to $12,000 a year, effective January 1, 1955. The seventh judge of the court is now drawing $12,000 a year under terms of a staggered salary act passed in 1952. The 1952 act provided a $12,000 salary at the beginning of each new eight-year term. The first new term began in January, 1953. The next term begins in January, 1955, another in January, 1957, and the last four in January, 1959.

Bills killed in the Massachusetts legislature included a measure proposing a 25 per cent pay increase for all judges in the state, and a measure which would have boosted the pay of some probate judges.

The Michigan legislature put through a bill increasing the state's contribution to circuit court judges' salaries from $9,000 to $12,500 a year. The bill provides, however, that total salaries may not exceed $22,500 a year, including supplemental compensation paid by the counties.

Retirement of Judges

On May 11th the United States Senate approved a proposed amendment to the Constitution which would compel all Federal judges, from the Supreme Court on down, to retire at the age of 75, except those appointed for fixed terms. The retired jurists would continue to receive normal compensation. The proposed amendment would also prevent any future attempt to "pack" the Supreme Court by fixing the court's membership at nine. The Constitution does not fix the number of justices on the Supreme Court. The court's size is now determined by law. Congress would also be prevented from restricting the authority of the Supreme Court to consider constitutional cases within its appellate jurisdiction. This is a prerogative rarely used by Congress.

Governor Stanley of Virginia has signed into law a bill providing for compulsory retirement at age 75 of any State Supreme Court justice appointed in the future and permitting present justices to retire at 65 if they have at least 10 years' service as a justice, or as a judge of a court of record in the state, or in combination of the two. The measure, effective June 30, provides that retired justices may be recalled by the Supreme Court to active judicial service for 90-day periods to assist in "the expeditious disposition of the business of the court." Also enacted was a companion bill making the same retirement and recall provisions for judges of corporation and circuit courts and for members of the State Corporation Commision and of the Virginia Industrial Commission.

Michigan's probate judges go under a state pension system under a bill signed into law by Governor Williams May 4. The jurists will draw up to $4,000 a year in retirement benefits from a fund to be set up by personal contributions of 5 per cent of their salaries and fees charged in estate and adoption cases. The measure required that a judge must have

served 20 years continuously in order to be eligible for retirement.

In Montana the district judges agreed at a conference earlier this year to seek support of the Montana Bar Association for a bill to be submitted to the 1955 state legislature which would permit them to retire on at least half pay on reaching the age of 65 and serving three or more terms on the bench.

Miscellaneous

Governor Shivers signed a bill on April 15 outlawing the Communist party in Texas. The law provides prison terms up to 20 years and fines up to $25,000 for its members. "This is one of the finest pieces of legislation the legislature has passed in years," the Governor declared.

Governor Dewey outlawed one-man investigating committees in New York, and warned against "grave excesses" in legislative inquiries. He also vetoed two bills that would have put the "rules of the road" provisions of the Uniform Motor Vehicle Code into effect in New York next January 1.

A broad program designed to provide ethical guidance for public officials and employees and to protect the interests of the public was signed recently by the Governor of New York.

Among next year's proposed amendments to the New York State Constitution to be presented to the legislature are four dealing with the judiciary. One would bar judges and justices of courts of record from becoming candidates for nonjudicial office without resigning from the bench. Such a restriction already applies to court of appeals judges and supreme court justices. Another of these proposals, applying to New York City, would empower the Governor to make temporary appointments to the higher courts to replace jurists who become incapacitated by illness. A third would authorize similar appointments to county courts outside New York City. The fourth would broaden the jurisdiction of the New York City Court to cover actions for the recovery of property as distinguished from suits to recover the value of property wrongfully taken.

Items in Brief

THE PHILADELPHIA BAR ASSOCIATION, by a vote of 73 to 49, last month approved a recommendation of a special committee that membership in the Association be required of all lawyers desiring to practice in that county, and ordered a poll of the entire bar on the question. Such an arrangement already obtains in fifteen of the state's sixty-seven counties, and in twenty others all lawyers are in fact members of the county bar association.

"TELL IT TO THE JUDGE" should be the rule more often in traffic cases, James P. Economos, director of the American Bar Association traffic court program, told the Highway Transportation Congress in Washington last month. Having to face a judge would be more of a deterrent than mailing a check to a violations bureau, he suggested, and traffic courts might be effectively utilized as a classroom for imposition of corrective penalties.

AN INSTITUTE on improving the method of selecting judges in Michigan will be held at the University of Michigan law school, Ann Arbor, on Friday, August 20. William W. Crowdus, St. Louis, Mo., chairman of the Missouri Bar committee at the time of the adoption of the Missouri plan, will be the luncheon speaker.

POCKET PILFERING, an indoor sport to which women have been addicted ever since men first wore pants and carried money, may now be a crime, at least in New York, where the Appellate Division, Second Department, has just ruled that theft from a spouse is possible. "The law is not static," said Justice George J. Beldock, in reversing a county judge's contrary holding.

Judges Show Attorneys How Not to Behave in Court

TEN OREGON district court judges dropped their judicial dignity long enough to pose for this photograph in a Portland courtroom, demonstrating their idea of how attorneys should not conduct themselves in their courtrooms. How many violations can you find in this picture of the rules for demeanor of attorneys in court set forth in Joseph H. Hinshaw's article "Courtroom Decorum" published in this JOURNAL last August (37 J. Am. Jud. Soc. 44)?

Presiding in the mock trial scene, and waving his cigarette in the air, is Judge John R. Mears, Multnomah County. Judge Richard Burke, Multnomah County, one of the "attorneys," stands in front of the bench with clenched fist upraised. Judge D. E. Van Vactor, Klamath County, points his finger at opposing counsel, Judge Glen Hieber, Washington County, who in turn threatens "witness" Mary Wakefield, really the court reporter, with a pencil.

Three more judges, in the role of slightly bored attorneys awaiting the call of their cases, sprawl in various attitudes of indifference and somnolescence along the right wall. They are Judge Rowles Moore, Jackson County; Judge John F. Gantenbein, Multnomah County; and Judge Rolling B. Wood, Yamhill County. In front of them, Judge Val D. Sloper, Marion County, exhibits the soles of his shoes to the court, while Judge Ray D. Shoemaker, Multnomah County, extreme left foreground, gnaws his fingernails from a similarly relaxed position. Judge A. J. Geddes, center foreground, completes the picture of disrespectful inattention by turning his back on the court as he looks over a brief. *Photograph by Dave "Rollie" Dobson, from the* PORTLAND OREGONIAN.

Revision of Military Justice Code Is Proposed

The Defense Department has completed an omnibus revision of the Uniform Code of Military Justice, and will soon submit its proposals to Congress. The proposed changes, the result of more than a year's study, are designed primarily to increase morale and discipline in the military forces, and also to reduce the time and cost of court-martial procedures under the Code, which went into effect three years ago.

One of the proposals would have the effect of cutting the number of officers sitting in a military trial; another would permit an accused to waive trial before a multi-member court and elect to be tried before one qualified officer; and another would give commanding officers greater authority in imposing non-judicial punishment.

As explained in a recent *New York Times* article, the latter provision is intended to spare the soldier's military record of the stain of a court martial in more cases than is possible under existing regulations. For minor offenses, commanding officers would be empowered to order confinement of enlisted men for periods of not more than seven days or forfeiture of up to one-half of a month's pay, and to order forfeiture of one-half of an officer's pay for as much as three months.

Another proposed change would permit the release to civilian life of men who have served prison sentences but are retained in uniform involuntarily pending appeal, which sometimes involves as long as a year. In one branch of the service it is estimated that there are now twenty-five officers and 400 enlisted men who are neither on duty nor in confinement, but who cannot go back to civilian life until review of their cases has been completed.

The legislation also would modify the requirement for keeping records of courts-martial, reduce from thirty to ten days the time in which an accused may appeal to the Court of Military Appeals, and eliminate difficulties in prosecuting a service man for writing a bad check.

Charge Political Pressure on Madrid Bar Association

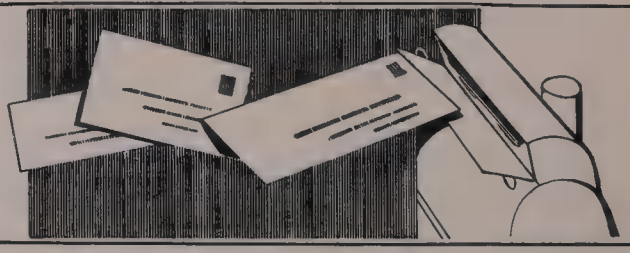
Efforts by a political party to gain control of the Madrid Bar Association in the election of its executive committee were charged last month by prominent Spanish lawyers. The 3,000-member organization is considered the most important professional body in Spain.

As reported by the *New York Times*, the Falangist party, which promotes an authoritarian ideology by the doctrines of the erstwhile Fascist party, circularized lawyer members urging them to vote for a slate endorsed by the party and urging that they ask other lawyers in their employ to give a formal promise to vote for that slate and to commend it to other lawyers.

"You may perhaps indicate also," the letter suggested, "to those who are hesitant and timid that we shall seek to check on their presence and vote at the elections."

Of the four candidates sponsored by the party, two were elected and two defeated.

The Reader's Viewpoint



Post the Canons In the Court Rooms

I have just read with interest your editorial on promoting the canons of ethics. I take the liberty of urging that one of the most effective ways of bringing the canons to the attention of members of the bar and judges who may be inclined to forget or overlook them is to have copies posted in all court rooms where they will be accessible to the general public.

It will be a wholesome thing to have the public more fully informed as to the standards of ethics formulated and adopted by the bar associations. It should help to heighten respect for members of the bar and judiciary if the people are made aware of the contents of the canons and the standards adopted for government of the legal profession. It would also be an effective aid in ridding the bar and bench of those who wilfully violate the standards.

I suggest that the American Judicature Society consider the matter of promoting a movement to encourage the posting of copies of the canons in all court rooms of trial courts.

WILL L. HOYT

District Judge
Nephi, Utah

Defamation of Lawyers by Insurance Adjusters

As a member of the bar and of the Judicature Society I have noticed the hue and cry over public relations and the demand of many members that the various bar associations over the country do something about it. In our own state a study has been made of the lawyer's standing in public estimation, and the result printed in the *Texas Bar Journal.*

With perhaps few exceptions, most members of the bar have at some time or other represented a claimant who has been injured in some accident in factory, store, or on the highway. Various derogatory epithets have been coined for the express purpose of destroying in the mind of the public confidence in the lawyer who represents such claimants. "Ambulance chaser," "shyster," etc., have found their way into our lexicon. These epithets have been so freely bandied about, used and misused, that the general public tends to apply them to all lawyers.

There are probably more than a thousand insurance companies in the United States, many having their own adjusters, the rest using independent adjusting services. A great many of these adjusters, of course, try to do their job honestly and fairly, but a great many more, unfortunately, use these epithets in a deliberate effort to scare the would-be claimant away from an attorney who could give him fair representation and adequate advice as to the value of his claim.

Almost immediately upon the first contact between such a claim adjuster and the injured person, poisonous ideas are insinuated into his mind against the "shyster" and the "ambulance chaser" and any lawyer, in fact, who might represent him, and almost invariably he is told that if he gets a lawyer, the lawyer will get most of the money.

What the claimant usually does not realize is that this is not disinterested advise. The poorer the representation of the claimant, the easier and less expensive it will be for the insurance carrier to effect a final disposition of the case on terms advantageous, not to the claimant, but to itself. In addition to the harm of the claimants, this more or less continuous and widespread character assassination of lawyers constitutes a major impediment to good relations between the bar and the public, and other public relations activities of our profession will be hampered until this wholesale and indiscriminate defamation is stopped.

Actually, just as bad things could be said about insurance adjusters as lawyers, and with just as much truth. We know, however, that there are honest adjusters who try to be fair, and that they perform a useful service, and we would not consider it right to indulge in wholesale denunciation of them. It should be possible to make the insurance companies realize this and to get them to instruct their adjusters to do their work on its own merits without resorting to defamatory tactics.

I suggest that the Judicature Society turn its resources to an attack on this problem. An article in the *Journal* would be helpful, followed by appointment of a committee, which might enlist the cooperation of the American Bar Association in taking it up with the various insurance companies and their counsel. Such conferences have been successful in other respects, notably unauthorized practice, and perhaps in less than a year's time substantial progress toward overcoming this important public relations problem could be had.

If I can be of any service in working out such a program I will be glad to cooperate.

GILBERT T. ADAMS,

Goodhue Building
Beaumont, Texas

The Literature of Judicial Administration

Judicial Reform in England: A Progress Report

The common origin of the institutions of justice in this country and in the nations of the British commonwealth makes it inevitable that their growth and development in those lands should be watched with interest by lawyers and judges in this country, as well as *vice versa*. An unusual opportunity to gain not only a clear picture of what they have in England, the parent country, but also the directions in which judicial reform is moving, and even the rate of progress, is to be found in the second edition of R. M. Jackson's *The Machinery of Justice in England*.[1]

Published in 1953, this book brings up to date an earlier volume which came out in 1940. It begins with a concise and useful historical introduction, although the author takes a gentle jab at the academic tradition "that it is cultural to know what happened in the middle ages and not cultural to know what happens in the twentieth century." In successive chapters are taken up the organization and procedures of the English courts with respect to civil jurisdiction and criminal jurisdistion; the personnel of the law, including solicitors and barristers, judges, juries and court officials; the cost of the law; special tribunals; and the outlook for reform.

In the latter connection, Dr. Jackson notes that in 1940 there were four major matters requiring attention: the provisions about treatment of offenders, legal aid and advice, justices of the peace and their courts, and organization and procedure in the superior courts. During the intervening thirteen years substantial progress was made with respect to all of these, but the most notable change reported in the second edition of the book is the new attitude of the bench and bar toward judicial reform as a whole.

> "The mental climate of the present time is reasonably favorable to the reform of the new law and of the administration of justice," he says. "Doubtless we must guard against complacency, but to continue to hammer away at inertia and complacency as if we were still living in the 1930's seems pointless and indeed to be a disservice to our system. Of course, changes are needed, and always will be if it is to meet the requirements of a changing society, but we need not be ashamed of the present nor fearful for the future."

During the same period of time, we are glad to be able to say, a similar trend has manifested itself on this side of the water. Since the 1930's, under the vigorous intellectual and spiritual leadership of men like Roscoe Pound, Arthur T. Vanderbilt, Herbert Harley, Harrison Tweed, Harold R. Medina, and others equally deserving of mention, the legal profession of America has dwarfed all previous comparable epochs in substantial progress and achievement in judicial administration reform. We too, as well as our English brethren, have every right to be proud of the present and to contemplate the future with confidence and anticipation. At least part of the credit belongs to the fine, forward-looking leaders of the English bench and bar who from year to year have delighted audiences at American professional gatherings, and at home have given judicial reform the sound and constructive leadership productive of the progress chronicled in Dr. Jackson's book.

Sometime somebody will write a manual of instructions and suggestions for the amateur editors of bar journals. Until that book makes its appearance, the best thing likely to turn up for their assistance is

1. New York: Cambridge University Press, 1953. Cloth, pp. ix and 372. $6.00.

Editing the Company Publication, by Garth Bentley.[2] Company publications differ in some ways from bar journals, but they have a great deal in common, and the ideas in this book on planning a new publication, selecting a format, collecting news, human interest stories, departments and features, writing editorials, headlines, printing and other production processes, and a hundred other matters of concern to editors will do wonders to lighten the load of the bar journal editor and help him to put out a better and more useful publication.

With social security and retirement plans for lawyers high in current professional interest, *The Retirement Handbook* by Joseph C. Buckley[3] should appeal to lawyers and judges of all ages. The bulk of it is properly concerned with the finances of retirement, and there is much more to this than mere participation in a pension plan, but it goes on with helpful suggestions for retirement-age activities, where to live in retirement, and how to prepare for retirement physically and mentally as well as financially. Robert Browning said the last of life is that for which the first was made. If so, it ought not to be approached haphazardly, grudgingly nor fearfully. For lawyers to neglect to plan for it is as inexcusable as for their clients to neglect to make a will.

Any bar association that does not already have it should write to the Florida Bar[4] for a copy of its new paper-bound volume, *Public Service Advertising Concerning Lawyers and Their Services, Sponsored by the Banks and Trust Companies of America.* It contains 88 pages of literal reproductions of institutional advertisements on behalf of the legal profession by financial institutions, and should be of invaluable assistance to public relations committees elsewhere as it already has been in Florida, in procuring the placing of such advertisements.

Also for the bar association public relations committee is *The Television Manual,* by William Hodapp.[5] More and more bar associations are being offered free television time by large and small stations, and especially the newer small UHF stations which lack the facilities for extensive programming of their own. Any bar association contemplating such a venture could profit from the general insight into TV program production which this book provides. It is a guide to television production and programming for education and public affairs as well as entertainment.

Two recent publications of the National Municipal League should be in the hands of all bar association personnel involved in judicial reform or other projects involving constitutional amendment or state-wide or community-wide action in any way. They are, *The Citizen Association – How to Organize and Run It,* and *How to Win Civic Campaigns.*[6] Based on successful experience largely in municipal government reform, these books contain the pattern for successful mobilization of public support for bar association projects.

We want our readers to take note of two new and important legal aid books. *Do You Need a Lawyer?* by Kathryn Close[7] sets forth in simple language the facts about lawyers' services and the public's need for them. It is No. 205 of the Public Affairs Pamphlets, a series widely used for discussion groups in school, churches and civic organizations. The other one is *Office Management Manual for Legal Aid Societies,*[8] by Junius L. Allison, former director of the Legal Aid Bureau of the United Charities of Chicago, now on the staff of the National Legal Aid Association. Most works on law office management are for private law offices. Legal aid offices differ from them in important ways, and this

2. New York: Harper and Brothers, 1953. Cloth, pp. ix and 242. $3.00.

3. New York: Harper and Brothers, 1953. Cloth, pp. xvi and 329. $3.95.

4. Supreme Court Building, Tallahassee.

5. New York: Farrar, Strauss and Young, 1953. Cloth, pp. xiv and 296. $4.50.

6. Both 64 pages, paper bound, for sale by the National Municipal League, 299 Broadway, New York 7, N. Y., 75 cents each or $1.20 for the two, reduced rates on quantities.

7. 28 pages, paper bound. Order from Public Affairs Pamphlets, 22 East 38th St., New York 16, N. Y. 25 cents, reduced rates on quantities.

8. Chicago: Public Administration Service, 1953. Paper, lithoprinted, pp. vii and 109. $2.00.

volume has been badly needed in recent years as new ones have been coming into being with increasing frequency. At the same time, they have much in common with other law offices, and the latter could undoubtedly find a great deal of value in this book.

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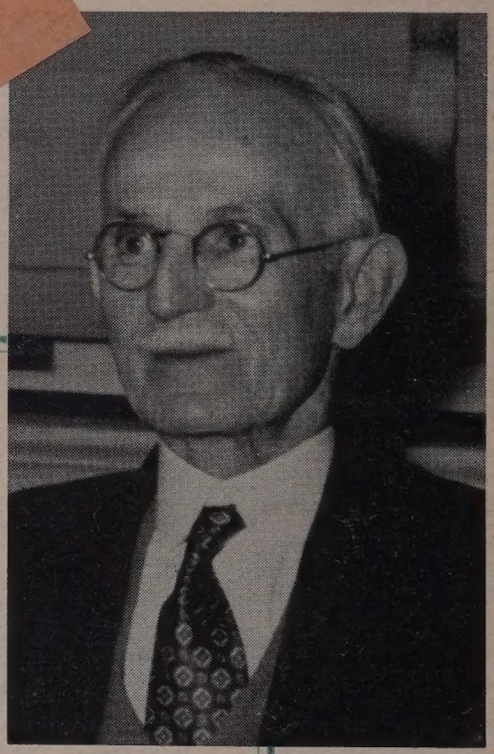

CLAUDE M. DEAN, clerk of the United States Court of Appeals for the Fourth Circuit, Richmond, Virginia, has announced his retirement on June 30, completing fifty-nine years of continuous service in that office. In all those years, Mr. Dean has missed only one term of court, due to an operation, and he has never been a minute late. Now eighty years of age, but still in good health, he offers as one reason for his retirement at this time his desire to give his deputy, Mr. R. M. F. Williams, who has been with him for forty-one years, a chance to be promoted to clerk before his own retirement. The JOURNAL congratulates Mr. Dean on this incomparable record, and wishes him well for the future.